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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,773	02/24/2004	John Reed Benziger	10505-002	2867

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EXAMINER	
LINDSEY, RODNEY M	

ART UNIT	PAPER NUMBER
3765	

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/786,773	BENZIGER, JOHN REED	
	Examiner	Art Unit	
	Rodney M. Lindsey	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 May 2005 and 23 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7,9-18 and 21* is/are pending in the application.

4a) Of the above claim(s) *9,11 and 15* is/are withdrawn from consideration.

5)☒ Claim(s) *21* is/are allowed.

6)☒ Claim(s) *1-7,10,12-14 and 16-18* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *24 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *6/29/05*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election of the species of Figures 1A-1F in the reply filed on May 12, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Note that the restriction requirement is based on the species being patentably distinct.

2. Claims 9, 11 and 15, not directed to the species of Figures 1A-1F are withdrawn from further consideration since these claims do not depend upon or otherwise include each of the limitations of an allowed generic claim as required by 37 CFR 1.141.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-7, 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niv in view of Gruget. With respect to claims 1, 3, 5, 6 and 10 Niv shows weighted layers 26, 30 dimensioned to fit into a headwear equivalent to the combined features 12, 22, 28 with 12 being a skullcap comprising the weighted layers 26, 30 and with 22, 28 defining spaces for the weighted layers. Niv does not teach the weighted layers comprising an elastomer and weighted bodies and weighing between about 100 or 500 grams and about 2,000 or 3,000 grams. Gruget teaches old to form weighted layers comprising an elastomer and weighted bodies (see column 1, lines 43 -45). It would have been obvious to one of ordinary skill in the art at the time of the

invention to substitute the weighted layers comprising an elastomer and weighted bodies of Gruget for the weighted layers as at 26, 30 of Niv to achieve the advantage of employing weighted layers capable of conforming to body contours as taught by Gruget (see column 1, line 47). The particular weight of the weighted layers would not have been critical since all that would have been required is that they be of any weight capable of promoting bone development. With respect to claim 2 the powdered or granular lead taught by Gruget is equivalent to lead shot as claimed. With respect to claim 4 the thickness of the weighted layer would not have been critical since all that would have been required is that the overall weight of the weighted layer be of a value to promote bone development. With respect to claim 7 the weighted layer may be seen to comprised the sleeves 22 to the inside of which is adhered the fabric liner at 12. With respect to claim 12 in that the weighted layer allows the cap to define a line of fit it therefore conforms to the line of fit as claimed.

5. Claims 13 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Niv in view of Kuss. With respect to claim 13 Niv shows positioning headwear 10 on a person's head, the headwear 10 comprising added mass 26, 30 within space defined by 22, 28. Niv does not teach a total mass of between about 100 and about 3,000 grams of the headwear and walking between 20 and 60 minutes while wearing the headwear. The particular weight of the headwear would not have been critical since all that would have been required is that the headwear be of any weight capable of promoting bone development. Kuss teaches old walking while wearing weighted headwear. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Niv such that the headwear is worn while walking in view of such teaching by Kuss to achieve the advantage of improving posture. The particular period of time

for walking would have been considered an obvious matter of choice and design to one of ordinary skill in the art at the time of the invention since all that would have been critical is that a person walk for a time necessary to promote bone development or good posture. With respect to claim 16 note the skullcap of Niv. With respect to claims 17 and 18 the act of repeatedly performing an exercise until a desired result is achieved is old and well known.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Niv in view of Kuss as applied to claim 13 above, and further in view of Gruget. Niv teaches weighted layers 26, 30 shaped to the members 22, 28 of the skullcap 12 and therefore skullcap-shaped. Niv does not teach the weighted layers comprised of an elastomer and weighted bodies. Gruget teaches old to form weighted layers comprising an elastomer and weighted bodies (see column 1, lines 43 -45). It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the weighted layers comprising an elastomer and weighted bodies of Gruget for the weighted layers as at 26, 30 of Niv to achieve the advantage of employing weighted layers capable of conforming to body contours as taught by Gruget (see column 1, line 47).

Allowable Subject Matter

7. Claim 21 is allowed.

Response to Arguments

8. Applicant's arguments filed May 12, 2005 have been fully considered but they are not persuasive. Contrary to applicant's remarks the heart of claims 1, 5, 10 and 14 is the presence of an elastomer and weighted bodies. Such claims are easily met by forming the weights of Niv of the materials taught by Gruget. Clearly one of ordinary skill in the art of forming weights would be capable of substituting one material for another to achieve a like function of providing a

weight. The propriety of the teachings of Kuss likewise is hereby maintained. Applicant's remarks drawn to the limitation of "conventional" are well taken thus rejections regarding the use of "conventional" are hereby vacated. The metes and bounds of the claims are now seen to be readily determined by one of ordinary skill in the art in light of the specification.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the engagement of the liner 4 in the cap of McManus.

10. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rodney M. Lindsey
Primary Examiner
Art Unit 3765

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